IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 66 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTILAL P PARMAR

Versus

G S R T C

Appearance:

1. Special Civil Application No. 66 of 1987

MR YN OZA for Petitioner No. 1

MRS VASAVDATTA BHATT for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 03/05/2002

ORAL JUDGEMENT

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking

relief to the effect that he being handicapped person he should be paid special allowance at the rate of Rs.30/per month as per Clause 4 of the Settlement dated 3rd July, 1981 arrived in Reference (IT) No. 106 and 107 of 1981. He has also prayed for direction on the respondent to pay him conveyance allowance at the rate of Rs.50/- per month pursuant to the resolution of the Finance Department of the Government of Gujarat dated 5th January, 1979 with effect from 1st December, 1978.

2. According to petitioner, he joined the service of respondent in the year 1973 as Clerk in Mehsana Division. According to him, he is a member of scheduled caste and he is physically handicapped as his right hand has been amputated on account of damage caused to it due to electric shock in the year 1968. He further states that at the time of his appointment in the employment of respondent corporation he had produced the disability certificate issued by the Civil Surgeon, Mehsana indicating disability suffered by the petitioner to the extent of 90%. His case is that the respondent, by virtue of the aforesaid settlement has been paying Rs.30/- as special allowance to the handicapped persons in its employment. His grievance is that for no reason this allowance is refused to him. He, therefore, alleges that the respondent corporation is violating the provisions of Article 14 of the Constitution of India. His case further is that vide resolution dated 5th January, 1979 passed by the Finance Department of the Government of Gujarat conveyance allowance is being paid to the employees of the respondent corporation at the rate of 10% of their basic salary subject to ceiling limit of Rs.50/- per month. This benefit is being made available to orthopaedically handicapped employees of the respondent corporation. According to him, respondent is not even paying this allowance to him and thereby he is being given discriminatory treatment. He has averred that considering the provisions of the settlement as well as the resolution of the Finance Department, he is legitimately entitled to receive both these allowances and the respondent, therefore, be directed to pay the same to him.

3. Respondent corporation has contested this petition by filing affidavit-in-reply wherein it has contended that the petitioner is not entitled to have the benefit of special allowance because his case is not covered under the settlement. According to the respondent, Clause 9 of the aforesaid settlement provides that only those persons who are recruited in accordance with the rules of recruitment as physically handicapped

persons are entitled to receive special allowance of Rs.30/-. It has been further contended that in light of the aforesaid settlement Central Office of the respondent has issued guidelines to the effect that those who are recruited in accordance with rules for general recruitment after calling the names from the Employment Exchange, Social Welfare Department, etc. and if alongwith those candidates any names are received of candidates who are physically handicapped and such candidates get appointment in accordance with rules for general recruitment, such candidates are not entitled to the benefit of the special allowance. In other words, say of the respondent is that only those persons who are recruited to maintain the ratio of reservation of physically handicapped persons after calling for the names of such candidates through divisional Employment Exchange offices meant for physically handicapped persons, are entitled to receive this benefit. In nutshell, its case is that since the petitioner is not recruited specially as handicapped person, he cannot get this allowance. The say of the respondent is that so far conveyance allowance is concerned, the resolution relied on by the petitioner is not applicable to the respondent since it is only meant for blind and orthopaedically handicapped Government servants.

4. Mr. Shivang Shukla, learned advocate for petitioner appearing on behalf of Mr. Y.N. Oza has submitted that the fact that the petitioner is handicapped is not disputed by the respondent. He has further submitted that the respondent corporation is paying special allowance to its other handicapped employees and the petitioner being a handicapped person, he should also receive that benefit. He has further submitted that there is no obvious reason why the petitioner's case is being put on different footing. He has also submitted that since the respondent corporation is paying conveyance allowance to its other handicapped employees, it should be directed to pay the same to the petitioner also.

4.1. As against that, Mrs. Vasavdatta Bhatt, learned counsel for the respondent has submitted that since the petitioner does not fall within the purview of the terms of the settlement relating to 'handicapped', he cannot get the benefit of special allowance. Moreover, she has submitted that the provision with regard to conveyance allowance is not applicable to the respondent corporation because it is only meant for the Government servants.

5. Having heard the learned counsels of both the

sides and having gone through the record of the petition, it appears that the special allowance is given by the respondent Corporation only to persons who are recruited in accordance with recruitment rules as handicapped persons in the employment of the respondent. Since the petitioner's appointment is made pursuant to general recruitment, he cannot be extended the benefit of special allowance. Provision of Clause 9 of the settlement is very clear on this aspect. It reads as under :-

> "Only those candidates who are recruited as handicapped persons in accordance with the rules framed for such appointments shall be entitled to receive Rs.30/- as special allowance."

Since the petitioner's appointment is as a result of general recruitment, he cannot be said to be a person appointed as handicapped person as envisaged in Clause 9 of the settlement. Since the settlement is arrived at in IT Reference and the same has been given form of the award passed by the Tribunal, it is equally binding on the petitioner. It is rather unfortunate that the petitioner, who is admittedly a handicapped person and who works with the respondent corporation, does not receive this benefit for the reason that this benefit is restricted to only to the persons referred to in Clause 9 of the settlement. In light of that the petitioner's request for payment of special allowance cannot be granted.

6. So far the conveyance allowance is concerned, petitioner has asserted his claim on the basis of resolution passed by the Finance Department of the Government of Gujarat and also on the basis of the fact that such benefit is being extended to other handicapped employees of the respondent corporation. In answer to this, the respondent in its affidavit-in-reply has only stated that it being a Government resolution, it applies only the Government servants and not to the employees of the respondent corporation. The respondent corporation has, however, not controverted the contention of the petitioner that the conveyance allowance of Rs.30/- is being paid to other handicapped employees of the respondent corporation. Since this allowance falls outside the purview of the aforesaid settlement and it is being paid by virtue of the resolution of the Finance Department, the petitioner can also get benefit of the same and the respondent corporation cannot deny it simply on the ground that the resolution pertains to the Government employees alone. When other handicapped employees of the respondent corporation are receiving

this benefit, there is no earthly reason why the petitioner's case should be discriminated. The respondent is, therefore, bound to make this benefit available to the petitioner also.

7. As a result of the aforesaid discussion, the respondent corporation is hereby directed to pay to the petitioner conveyance allowance as per his prayer contained in clause (B) of para. 18 of the petition, with a modification that in that prayer the petitioner has claimed the conveyance allowance at the rate of Rs.50/per month, but instead it should be paid at the rate of Rs.30/- per month. Before I part with this judgment I may say, as observed earlier, that the case of the petitioner is unfortunate. He may, therefore, move the respondent-Corporation by filing representation so far granting the special allowance is concerned and as and when such representation is made, the respondent corporation may decide the same on merits, without being influenced by this judgment.

8. The result is that this petition is partly allowed. Rule is made absolute to aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.